

**FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
45 L St., NE
Washington, DC 20554**

October 11, 2022

By E-mail

NOTICE OF COMPLAINT

Southwestern Bell Telephone Company)	
d/b/a AT&T Texas,)	
)	
Complainant,)	
)	
)	Proceeding Number 22-357
v.)	Bureau ID Number EB-22-MD-004
)	
AEP Texas Inc.)	
)	
Defendant.)	

Christopher S. Huther
Claire J. Evans
Frank Scaduto
Wiley Rein LLP
2050 M Street NW
Washington, DC 20036
chuther@wiley.law
cevens@wiley.law
fscaduto@wiley.law
Counsel for Complainant

Eric B. Langley
Langley Bromberg
2700 U.S. Highway 280
Suite 350E
Birmingham, Alabama 35223
eric@langleybromberg.com
Counsel for Defendant

Dear Counsel:

On October 4, 2022, Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T) filed with this Commission a complaint against AEP Texas Inc. (AEP)¹ pursuant to Commission orders and rules issued under Section 224 of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 224.² AEP should have

¹ Pole Attachment Complaint, Proceeding No. 22-357, Bureau Id. No. EB-22-MD-004 (filed Oct. 4, 2022) (Complaint).

² See, e.g., *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011), *aff'd*, *Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 1183 (D.C. Cir. 2013), *cert. denied*, 571 U.S. 940 (2013);

a copy of the Complaint served by hand by AT&T on October 4, 2022. *See* 47 CFR § 1.734(c). If that is not the case, AEP should immediately contact Commission counsel.

Lia Royle and I are Commission counsel for this proceeding. My phone number is (202) 418-7335, and my e-mail address is lisa.saks@fcc.gov. Lia's phone number is (202) 418-7391, and her e-mail address is lia.royle@fcc.gov.

We notice that, while AT&T has filed a confidential version of the Complaint, it has not filed a confidentiality request as required by Commission rule 0.459, 47 C.F.R. § 0.459. If AT&T wishes the information identified as confidential to remain so, it should file a confidentiality request by **October 14, 2022**.

This letter outlines the procedural rules relevant to this case and establishes a schedule for the proceeding. We will conduct this proceeding in accordance with the Commission's rules governing section 224 complaint proceedings, which are found at 47 CFR §§ 1.720-1.740 and 1.1401-1.1415.³

Schedule for this Proceeding

The schedule for this proceeding is set forth below. All filings must comply with the Commission's rules and with this Notice.⁴

1) By **November 3, 2022**, AEP must file and serve an answer to the Complaint that complies with 47 CFR § 1.726. Any interrogatories posed by AEP must be filed and served concurrently with the answer. 47 CFR §1.730(a).⁵

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Development, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018); 47 CFR §§ 1.1401-1.1425.

³ *See also Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 33 FCC Rcd 7178 (2018) (*Rule Consolidation Order*); *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed when Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997) (*Formal Complaints Order*), Order on Reconsideration, 16 FCC Rcd 5681 (2001) (*Formal Complaints Recon Order*); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, Order, 29 FCC Rcd 14078 (2014) (*Formal Complaints Amendment Order*). The rules governing this proceeding differ significantly from the Federal Rules of Civil Procedure. For example, the Commission requires parties to file fact-based pleadings. *See Formal Complaints Order*, 12 FCC Rcd at 54, para. 120, 47 CFR §§ 1.721(b)-(d), (r), 1.726(b). Further, complaint proceedings "are generally resolved on a written record consisting of a complaint, answer, reply, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated evidence in the record." 47 CFR § 1.721.

⁴ Staff has authority under sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, to modify the filing deadlines and other requirements contained in the formal complaint rules as the circumstances of individual cases warrant and to the extent consistent with section 1.740 of the rules, 47 CFR § 1.740. In addition, if a filing contains a citation to material that appears on the Internet, the filing must attach a hard copy of that material. *See* 47 CFR §1.721(g), (k).

⁵ Although motions to dismiss are permitted, they should be filed only in rare circumstances. 47 CFR § 1.729(d); *Rule Consolidation Order*, 33 FCC Rcd at 7182-83, paras. 13-14 ("[M]otions to dismiss are rarely warranted. The formal complaint rules "are designed so that a defendant's answer is a comprehensive pleading containing complete factual and legal analysis, including a thorough explanation of every ground for dismissing or denying the complaint." (quoting *Formal Complaints Recon Order*, 16 FCC Rcd at 5696, para. 34); *Rule Consolidation Order*, 33 FCC Rcd at 7183, para. 14 ("[W]e consider there to be few circumstances justifying the filing of a separate motion to dismiss. . .").

2) By **November 14, 2022**, AT&T must file and serve a reply to the answer that complies with 47 CFR § 1.728. Any second request for interrogatories posed by AT&T must be filed and served concurrently with its reply. 47 CFR § 1.730(a).

3) A party must file and serve any opposition and objections to the opposing party's interrogatories within seven calendar days after service of the interrogatories. Any interrogatories to which no opposition or objection is raised must be answered within 20 days of service. 47 CFR § 1.730(c).

4) The parties must discuss the resolution or narrowing of as many issues as possible. These discussions should include settlement prospects, discovery, factual and legal issues in dispute, the case schedule, and the preparation of joint statements. *See* 47 CFR § 1.733(b). Based on these discussions, the parties should prepare joint statements of (a) stipulated facts, disputed facts, and key legal issues; and (b) all proposals agreed to and any disputes remaining regarding the matters listed in 47 CFR § 1.733(b)(1). The joint statements must be filed by **December 1, 2022**. The parties may submit these two joint statements in a single document if each is separately identified. **We strongly encourage the parties to devote substantial effort to developing comprehensive and detailed joint statements.** *See Formal Complaints Recon Order*, 16 FCC Rcd at 5696-97, para. 35. After reviewing the joint statement, staff will contact the parties to discuss future steps in the proceeding.

5) The above schedule anticipates final action on the Complaint within 270 days of its filing. *See Rule Consolidation Order*, 33 FCC Rcd at 7186, paras. 22-23. The Enforcement Bureau has discretion to pause the 270-day review period where actions outside the Commission's control (such as settlement discussions or mediation) delay Commission review of the complaint or where the Bureau determines that the issues and record are particularly complex, necessitating additional time for discovery, briefing or the submission of information requested by the Bureau. *See Rule Consolidation Order*, 33 FCC Rcd at 7186, para. 23. In light of the 270-day review period, we will be disinclined to grant requests for deadline extensions, absent a showing of good cause. Further, tight deadlines will apply to any discovery and briefing that may be permitted in this matter, and discovery and briefing must be completed by **January 30, 2023**. The parties and their counsel should plan their schedules accordingly.

The parties must file a public version of all written submissions in this proceeding using the Commission's Electronic Comment Filing System (ECFS). All written submissions should (a) prominently contain the Proceeding Number and Bureau ID Number referenced above, and (b) be addressed to the Commission Secretary. A party that seeks to file both a public version and a confidential version of a submission must do so in compliance with section 1.731 of the Commission's rules and must file the public (redacted) version on ECFS and file the confidential (unredacted) version in hard copy form with the Office of the Commission Secretary. 47 CFR § 1.731. A party asserting confidentiality for any information or materials should restrict its designations to encompass only the specific information that it asserts is confidential. Confidential designations in pleadings must be clearly identified and marked accordingly, e.g., [Begin Confidential]/[End Confidential]. Confidential filings also must clearly identify and mark each page, or portion thereof, which includes confidential designations. *See* 47 CFR § 1.731(a)(1). In addition to filing the unredacted version with the Office of the Secretary, please leave at that office three additional unredacted hard copies marked as "Courtesy Staff Copies. EB-MDRD, 202-418-7330." *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). The parties must serve all filings via e-mail, hand-delivery, or overnight delivery, together with proof of service. *See* 47 CFR § 1.734(f). Also, please email to Commission counsel for this proceeding courtesy copies of all filings (both public versions and confidential versions) in a format that permits full text searching, if possible. *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). *See Formal Complaints Amendment Order*, 29 FCC Rcd at 14081, para. 11 (requiring parties to provide hard copies of submissions to Commission staff upon request).

This proceeding is restricted for *ex parte* purposes. See 47 CFR Part 1, Subpart H. Further, the parties are required to retain all records that may be relevant to the complaint, including electronic records, until the Commission's decision in this proceeding is final and no longer subject to judicial review. See 47 U.S.C. §§ 154(i), 208(a); 47 CFR § 42.7.

We issue this letter ruling under sections 4(i), 4(j), 208, and 224 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, 224, sections 1.3, 1.720-1.740, and 1.1401-1.1415 of the Commission's Rules, 47 CFR §§ 1.3, 1.720-1.740, 1.1401-1.1415, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION

Lisa Saks

Lisa Saks
Assistant Division Chief,
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission